

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**COMMENTS OF MANHATTAN COMMUNITY ACCESS CORPORATION**

These Comments are filed by Manhattan Community Access Corporation dba Manhattan Neighborhood Network (MNN) in support of the comments filed by the Alliance for Community Media ("Alliance"), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors ("NATOA"), and other national local government organizations. Like the Alliance, Manhattan Neighborhood Network (MNN) believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access ("PEG") services in our community.

**Cable Franchising in Our Community**

**Community Information**

Manhattan is a borough of New York City with a population of 1.56 million. Manhattan's franchised cable provider(s) are Time Warner Cable with a citywide OVS operated by RCN Corporation.

**Our Current Franchise**

Our current franchise began in September 1998, and expires in September 2008.

Our franchise requires the cable operator pay a franchise fee to the City of New York in the amount of 5% of the cable operator's gross revenues. The revenues

for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and governmental ("PEG") access channels on the cable system in Manhattan: four channels devoted to public access; one channel devoted to educational access and four channels devoted to government access.

Capital and operational support to MNN is provided by Time Warner Cable and RCN. This funding is over and above the five percent franchise fee paid to the City of New York. The operational support is subscriber-based and depends upon an annual dollar amount per subscriber. The capital support takes the form of one time annual payments for six out of the ten years of the franchise agreement.

In times of emergency, MNN has played a critical community role. For instance, in the wake of the attacks upon the World Trade Center in September 2001, MNN cablecast important information, programming and updates to the local community. This unique ability of a local cablecaster to respond to emergency events in a local community underscores the importance of PEG.

### **PEG Access Services**

Manhattan Neighborhood Network (MNN) has provided access services in our community for 15 years. MNN operates four access channels. In our most recently completed fiscal year, Manhattan Neighborhood Network cablecast 4,400 original series programs and more than 1,000 one-off specials. MNN cablecasts 520 hours of programming per week on its four channels.

MNN equipment and production facilities are open 80 hours a week. (Monday-Friday 10am-12am and Saturdays from 10am-8pm.) These services include two 3-Camera Studios, two Express Studios, nineteen Non-Linear Editing stations, four Linear Editing stations, two Dubbing stations, a conference room, and nearly two dozen Field Camera packages.

MNN's production team orientated over 500 new producers to Public Access in 2005. We certified 1,200 individuals in workshops and classes such as Field Camera, Studio Control Room and Express Studio as well as in editing programs like iMovie, Final Cut Pro and Live Type. Certification in these classes lead to the production of local community programs for MNN's four channels.

MNN's Community Outreach Department works with more than 100 community based organizations annually, providing them and their constituencies with specialized training and access to production resources tailored to meet the needs of their organization.

Since 1992 MNN through its Community Media Grants Program has redistributed nearly \$3,000,000 in equipment, training and direct financial support to over 80 Manhattan based community, cultural and civic organizations.

MNN's Youth Channel focuses on youth training and production, specifically in underserved communities. The Youth Channel produces 15 hours of programming per week. In 2005, Youth Channel provided media literacy and media production training to more than 500 people ranging in age from 12 to 21 years old. In the process, Youth Channel partnered with some 30 community based organizations as well as with public libraries, after school programs and at-risk youth initiatives.

Below are other highlights of our services to the community.

- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.
- Community-produced television programming for special interests (such as - seniors, non-English-speaking, ethnic and cultural groups, youth, people with disabilities, advocacy groups, health care, etc.)
- Staff-produced television programming on topics of interest to the local community.
- Dedicated channel capacity specifically for non-profit organizations to air locally-produced programming.
- Dedicated channel capacity specifically for religious organizations to air locally-produced programming.
- Hotline studios for live, interactive programs that allow local experts to answer viewer questions.
- Free viewing of cable service at selected public sites.
- Local news coverage (not on local broadcast stations).
- Grants to produce community programming.
- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production courses.

- Video production facilities including studio, field, editing, and, if available, remote van.
- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution.
- Technical design, installation, and maintenance support.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Production, support, and distribution for non-credit classes and job training.
- Internet access at public sites.
- Computer literacy training for youth and families.
- Local election coverage including candidate forums and debates often co-sponsored with community-based organizations including the League of Women Voters.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law.

In regards to the local franchise process, we would echo the comments of the Center for Digital Democracy.

"Cable franchise agreements, clearly, are unique social pacts. More than merely a license for companies to dispense multi-channel video and other services, these documents are crafted with specific community needs and interests in mind. As such, these agreements also contain the building blocks for a genuine community media movement, one that places the power of broadcast and digital technologies in the hands of individuals and nonprofit organizations normally excluded from the market-driven mainstream media.

Failure to ensure meaningful local governance in multi-channel broadband networks will seriously deprive the public of the ability to benefit from advanced communications. It will set back the commission's own goal of promoting localism, reduce diverse sources of programming, and remove one of the last democratically oriented principles of electronic media governance."

## **Conclusions**

"(T)he widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." U.S. Supreme Court in *Associated Press v. United States*, 326 U.S. 1, 20.

Public Access services are grounded in and support First Amendment freedom of speech, media justice, and public interest values, and are focused on contributing to and maintaining a vital and robust "marketplace of ideas" and encouraging broad participation of citizens in the civic and cultural life of the communities they serve.

In this regard, we believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Manhattan. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in

accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create new national functions in Washington to handle matters of primarily local interest and responsibility.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

As such, it is important that the FCC consider the principles put forward by ranking Senate Commerce Committee member Conrad Burns (R-Montana) and co-chair Daniel Inouye (D-Hawaii) which included that any telecommunications policy or legislation brought forward must;

Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process. "The regulation of video services under Title VI relies upon a type of 'deliberately structured dualism' where state and local authorities have primary responsibility for administration of the franchising process within certain federal limits. Because each community may be unique, this framework recognizes that the local franchising authority is uniquely positioned to ensure that video providers meet each community's needs and interests in a fair and equitable manner, and are most effective in seeing that provider obligations are enforced. The Federal government has neither the resources nor the expertise to address such issues. "Consistent with existing law, state or local franchise authorities should retain the authority to supervise rights-of-way use and recover the associated costs, to require the payment of a reasonable franchise fee, and to require sufficient outlets for local expression and appropriate institutional network obligations."

Manhattan Neighborhood Network (MNN) therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services

requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law.

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property;
2. Dedicating a minimum of ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

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